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Claims 1-19 are pending in the present application. All claims have been rejected. Claims 1-11 were provisionally rejected as being unpatentable over claims of co-pending U.S. Patent Application No. 10/719,988 on the ground of non-statutory obviousness-type double patenting. Claims 12-19 were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 12-19 in co-pending U.S. Patent Application No. 10/719,988. Claims 1-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. published Patent Application No. 2003/0224407 to Bertram et al. Each of these rejections is traversed for the reasons set forth below.

Non-Statutory Double Patenting Rejection of Claims 1-11

The provisional rejection of claims 1-11 on the grounds of obviousness-type double patenting with respect to claims from U.S. Patent Application No. 10/719,988 has been obviated by submission of a Terminal Disclaimer herewith. Withdrawal of the rejection is therefore respectfully requested.

Rejection of Claims 12-19 under 35 U.S.C. § 101

The provisional rejection of claims 12-19 under 35 U.S.C. § 101 is premised on pending claims 12-19 in co-pending Application No. 10/719,988. Upon an indication from the Office that all other issues have been resolved in the prosecution this application, claims 12-19 of co-pending U.S. Application No. 10/719,988 will be cancelled. At that time the provisional rejection of claims 12-19 in the instant application will become moot.

Rejection of Claims 1-8 under 35 U.S.C. § 103(a)

Claims 1-8 were rejected as being unpatentable over U.S. published Application No. 2003/0224407 to Betram et al. Independent claim 1 recites the following operations:

- (a) exposing a hepatocyte culture to the stimulus;
- (b) imaging the hepatocytes;

(c) analyzing an image of the hepatocytes to extract features characterizing the hepatocytes; and

(d) classifying the stimulus by quantitatively evaluating the extracted features to identify one or more hepatotoxic pathologies resulting from the stimulus, wherein hepatotoxic pathology classifications include two or more of the following: necrosis, cholestasis, steatosis, fibrosis, apoptosis, and cirrhosis.

The Bertram et al. application describes techniques for analyzing toxic or pathologic effects – including hepatotoxicity – induced by particular stimuli. Any similarities to claim 1 end there. Bertram's disclosed techniques have nothing to do with imaging hepatocytes or analyzing an image of the hepatocytes to extract features characterizing the hepatocytes. Bertram is concerned only with analyzing the genomic content of hepatocytes or other cells. This is accomplished using microarrays of DNA exposed to expressed mRNA. Bertram et al. characterizes the effect of certain stimuli such as toxins on hepatocytes or other cells by analyzing the hybridization pattern of mRNA on the microarray.

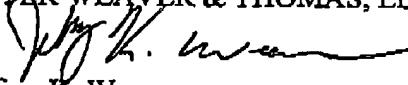
There is no mention of imaging hepatocytes anywhere in the disclosure of Bertram et al. Certainly there is nothing to suggest “analyzing an image of the hepatocytes to extract features characterizing the hepatocytes.”

Because the Bertram et al. published application fails to disclose or reasonably suggest at least elements (b) and (c) of pending claim 1, and because no other prior art references have been presented to reasonably suggest these features, it is respectfully submitted that independent claim 1 is patentable over the Bertram et al. published patent application. Withdrawal of the rejection of claim 1 and its dependent claims 2-7 is respectfully requested.

Conclusion

Applicants believe that all pending claims are allowable and respectfully request a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,
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